within the prohobition of the English Copyright Act of 1908. However, entertainments of a like nature have been held exempt from the operation of statutes which require all non-gratuitous performances to be licensed, on the ground that they are not for profit. *People v. Martin* (1912) 137 N. Y. S. 677 (cabaret show in restaurant); *People v. Wacke* (1912) 77 Misc. Rep. (N. Y.) 196 (moving pictures in hotel bar-room); *People v. Royal* (1897) 23 App. Div. (N. Y.) 258; *contra, Weisblatt v. Bingham* (1908) 58 Misc. Rep. (N. Y.) 328. An entertainment given for the patrons of a restaurant who are admitted on the understanding, either express or implied, that they make some purchase, is not essentially different from an entertainment for which an admission fee is charged. Undoubtedly, the purpose in providing these elaborate entertainments is to attract a larger and more wealthy patronage which is willing to pay higher prices than are exacted elsewhere for the privilege of enjoying meals in an atmosphere made more congenial by the diversions furnished by paid entertainers. As a case of first impression it would seem that the decision, although unsupported by authorities, is correct.

L. J. N.

EMINENT DOMAIN—TAKING OF PROPERTY FOR PRIVATE USE.—VETTER ET AL. V. BROADHURST (1916) 160 N. W. (NEB.) 109.—A and B were the owners of adjacent tracts of land. A, under sec. 3444, Neb. Rev. St. (1913) made application for the condemnation of a part of the land of B as a site for a reservoir from which to irrigate the land of A. *Held,* that the right of eminent domain could not be exercised for a purely private purpose.

"Public use" as applied to the exercise of the power of eminent domain is not capable of an exact definition. Some courts hold that "public use" means "use by the public"; that is public employment, and consequently that, to make a use public, a duty must devolve on the person holding property appropriated by right of eminent domain to furnish the public with the use intended, and the public must be entitled, as of right, to use or enjoy the property taken. *Wisconsin River Improvement Co. v. Pier* (1908) 137 Wis. 325; *Dice v. Sherman* (1907) 107 Va. 424. Another view is that "public use" means "public advantage," and that anything which contributes to the general welfare and the prosperity of the whole community constitutes a public use. *McMeekin v. Cent. Carolina Power Co.* (1908) 80 S. C. 512; *Tanner v. Treasury Tunnel, etc., Co.* (1906) 35 Col. 593. Other courts hold that the true definition of "public use" lies somewhere between these two. *Brown v. Gerald* (1905) 100 Me. 351; *Albright v. Sussex Co. etc., Commission* (1904) 71 N. J. L. 303. There are exceptional cases, under the theory of "public advantage," where the peculiar circumstances of climate and soil, as in Utah, permit condemnation for private purposes. *Clark v. Nash* (1905) 198 U. S. 361. It is certain that the government may not under any circumstances divest one citizen of his estate for the benefit of another where the public interest is in no way involved, even though compensation is made. *Ozark Coal Co. v. Penn, etc., R. Co.* (1911) 97 Ark. 495. The fact that the public will be incidentally benefited by the appropriation is not sufficient to

supply the power, when the taking is purely for a private purpose. *Jeter v. Vinton-Roanoke Water Co.* (1913) 114 Va. 769; *Thom v. Georgia Mfg. Co.* (1907) 128 Ga. 187. The principal case, while sustaining the theory of "public advantage" in general, does not consider the conditions in Nebraska sufficient to widen its scope of application.

E. J. M.

EVIDENCE—PRESUMPTIONS—RES IPSA LOQUITUR—SUFFICIENCY OF EVIDENCE.—FANSHAWE V. RAWLINS (1916) 98 ATL. (N. J.) 439.—In an action to recover for the care and board of the defendant's horses, the defendant set up a counterclaim for an injury to a mare which he proved occurred while the mare was at pasture on the plaintiff's farm. He offered no additional facts as evidence to show that the plaintiff was negligent, but asked for an instruction that the burden of proof shifted, which was refused. *Held,* that there was an error, as the doctrine of *res ipsa loquitur,* though applicable, warranted merely a submission of the question to the jury.

Where the doctrine of *res ipsa loquitur* has been clearly and distinctly presented, most courts have held in the case of agisters, as well as in negligence cases generally, that the burden of proving negligence affirmatively is on the plaintiff. *Nichols v. Union Stockyards and Transit Co.* (1916) 193 Ill. App. 14; *Everitt v. Foley* (1907) 132 Ill. App. 438; *Whitaker v. Chicago, St. P. M. and O. R. Co.* (1911) 115 Minn. 140. A few courts (principally in South Carolina) have held that where it is shown that an injury happened while the animal or chattel was in the care of the defendant, the doctrine of *res ipsa loquitur* applies and the burden of proof shifts to the defendant. *Nutt v. Davison* (1913) 54 Col. 586; *Sullivan v. Charleston and W. C. R. Co.* (1910) 85 S. C. 532. But the burden of proof, in the sense of the risk of non-persuasion, never shifts during the course of a trial, but remains with the plaintiff to the end. *Casey v. Donovan* (1896) 65 Mo. App. 521. In the sense of the necessity of going forward with the evidence, to meet a *prima facie* case, the burden of proof may shift, but this does not mean that the defendant must show by the preponderance of the evidence that he used due care. *Briglio v. Holt* (1915) 147 Pac. (Wash.) 877. The principal case follows the majority rule, holding that the occurrence of an injury is merely *prima facie* evidence which may warrant, but does not compel, an inference of negligence, and does not necessarily amount to proof. *Mumma v. Easton and A. R. Co.* (1905) 73 N. J. L. 653. Unless the facts are such that only one inference can be drawn, the question is one for the jury. *Vaughn v. Bixby* (1914) 24 Cal. App. 641. The function of the maxim of *res ipso loquitur,* therefore, is merely to carry the question of negligence past the court into the field of the jury. *Sewell v. Detroit United R. Co.* (1909) 158 Mich. 407.

S. J. T.

EVIDENCE—SUBSTANTIVE LAW—ORAL AGREEMENT VARYING WRITTEN CONTRACT—PARTIAL FAILURE OF CONSIDERATION.—INTERNATIONAL HARVESTER CO. V. PARHAM (1916) 90 S. E. (N. C.) 503.—A note recited on its face that it was given for a manure spreader. The maker offered to prove